



# Legal Developments

Issue

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Information for USAID partner organizations operating in Belarus, Moldova and Ukraine, provided by the Legal Office of the Regional USAID Mission for Ukraine, Belarus and Moldova

## *Highlights – November 2002*

- Still under a continuing resolution
- Importing computers from the U.S.
- Relief on export processing zones
- Are banks in Ukraine reporting on you?

## **United States**

USAID currently is operating under a series of “continuing resolutions”, because the U.S. Congress has not yet passed a final foreign assistance appropriation for the fiscal year that began October 1. This situation, coupled with the effect of procedures for carrying forward remaining funds from the past fiscal year, has the effect of temporarily limiting the Regional Mission’s ability to obligate funds. The length of the delay will become clearer by the middle of November 2002.

Many USAID partners seek to import computers and software from the U.S. for program purposes. In doing so, partners should be mindful of possible license restrictions imposed by software makers, as well as application of the Export Administration Regulations (EAR). For example, Microsoft states that “should an end user elect to export a North American English product, the warranty, product support and in some instances the license, are void.” It recommends that you “purchase the software overseas in the country where it will be used.” The EAR, which if violated can result in significant penalties, restricts export from the U.S. of certain types of computers and software. There is a specific exception in the EAR that allows, in most cases, U.S. citizens and permanent residents to take

personal-use computers and software overseas, but this exception would not apply to computers imported for use by others, including host country nationals.

USAID policy for some years has implemented a law that severely limited assistance to develop export processing zones or similar zones in which the tax, tariff, labor, environment, and safety laws of a country do not apply. The policy has continued despite the removal of the law last year. USAID is however in the process of revising the policy (known as PD-20) to permit new activities to support these zones, such as Ukraine’s special economic zones and special investment regime areas.

During the upcoming holiday season, please remember that USAID employees may not accept most types of gifts from organizations doing or seeking to do business with USAID. Partners can avoid a situation that is uncomfortable – for both sides – by being familiar with U.S. Government regulations on ethical conduct and not offering gifts that may not be accepted.

## **Ukraine**

Both U.S. and Ukrainian rules are relevant to organizations producing publications and other copyrightable works for use in USAID programs in Ukraine. USAID agreements specify the division of intellectual property rights between USAID and its partner, but a Ukrainian lawyer should be consulted in planning for use and disposition of works in Ukraine. For example, Ukrainian law establishes requirements for format and substance of contracts to assign a copyright or license use of works. Such contracts with private

or governmental entities could be nullified if they violate local law. Please note that USAID agreements generally require such contracts to confirm USAID's rights to works covered by the contract.

The Cabinet of Ministers, in Resolution #700 of May 29, 2002, established criteria for characterizing bank transactions as questionable and unusual for purposes of article 18 of the law "On Financial Services and State Regulation of Financial Services Markets." The law requires banks to report questionable and unusual transactions – without notifying the clients engaging in those transactions. Notable among the criteria are the following: if a given transaction is reasonably suspected of being associated with performance of a contract made contrary to law; and if a foreign currency transaction in a person's account relates to a "foreign economic contract" in which the person is not a contracting party. The latter could mean that banks are reporting on individual bank accounts used to facilitate payments by an individual's employer to Ukrainian entities.

Fear not: a letter issued by the State Tax Administration (STA #4264/6/15-1416 of June 5, 2002) and obtained by some USAID partners does not impose unhelpful new rules. It does explain the application of some tax provisions to grants for charitable and technical assistance. Please also note that STA letters may not contradict or supersede normative acts.

### **Belarus**

U.S. assistance programs are now regulated in part by a new resolution of the Ministry of Tax and Duties and the State Customs Committee, number 56/59. Titled "on Taxation and Customs Payments of U.S. Assistance Programs", it contains procedures for applying for refund of VAT. This includes a vague reference to submission of a monthly report to local tax authorities. This and other requirements in the resolution will be discussed with the Belarusian government, but in the interim USAID suggests that contractors and grantees adopt a uniform posture regarding the report by simply submitting a copy of the semi-annual reports they provide to the Ministry of Foreign Affairs, along with a letter

discussing any parts of a report that have become inaccurate.

The Ministry of Economy has indicated that a presidential decree on taxation of technical assistance will issue before the end of the year, and that next year it will be developing a broader law on technical assistance.

Note that importers promising duty exemption on goods paid for in off-shore transactions often are unable to deliver the documentation necessary to properly register and transfer ownership of the goods within Belarus.

Congressman Chris Smith's bill for a "Belarus Democracy Act of 2002", which he introduced in June, remains under consideration by a congressional subcommittee.

### **Moldova**

Some organizations with expatriate staff in Moldova may not be aware of registration requirements for such employees. Moldovan legislation requires registration of foreigners within three working days of entry. (The exceptions to this requirement, such as for diplomats, generally are not available for USAID partners' staff.) The Department of Information Technologies supervises such registration. Failure to register has not caused many problems to date, but as a legal matter it does pose a risk to an expatriate's ability to reside and work legally in Moldova.

The October 2002 issue of the official monthly magazine "Accounting and Audit" comments on the payment of social taxes on behalf of Moldovan employees working on technical assistance projects. The comments deal in part with the liability imposed on employers that fail to pay social contributions.

It is worth considering that restrictions in the currency regulations on the amount of cash that may be withdrawn from a corporate bank account to cover a legal entity's operational expenses (we believe that limit currently is 15,000 Lei) do not apply to cash withdrawn to pay salaries. Partners should check with their banks for confirmation.